IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Jail Appeal No. 2060 of 2001
(Old No. 681 of 1988)

Liyaqat
S/o Ismail

…….. Appellant
(In jail)

Versus

The State

……. Respondent

Mr. Ajay Singh Bisht, Advocate (Amicus Curiae) for the appellant.
Mr. Nandan Arya, A.G.A. for the respondent State.

Hon. Prafulla C. Pant, J.

This appeal, preferred under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 31.03.1986, passed by learned Special Judge / Additional Sessions Judge, Nainital, in Sessions trial No. 143 of 1985 and Sessions Trial No. 144 of 1985, whereby the appellant Liyaqat has been convicted under Section 25 of the Arms Act, 1959, and also under Section 392 read with Section 397 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.). The trial court has sentenced the convict Liyaqat to undergo rigorous imprisonment for a period of six months under Section 25 of the Arms Act, 1959, and rigorous imprisonment for a period of seven years under Section 392 read with Section 397 of I.P.C. Both the sentences are directed to run concurrently by the trial court.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that on 12.06.1984, at about 10;30 P.M., when Avdesh Kumar (P.W. 1) along with Har Prasad (P.W. 2) and Ram Saran (P.W. 3) were taking food in the liquor godown situated in Mangal Parao, Haldwani, four miscreants, armed with knives and pistols, entered into the godown. They brandished the knives and pistols, which they were carrying in their hands, at above mentioned witnesses. One of the miscreants also fired from his pistol, which did not hit any of the witnesses, mentioned above. The miscreants robbed a watch and a ring from Avdesh Kumar, cash worth Rs. 650/- and wrist watch from Har Prasad and cash worth Rs. 522 and writ watch from Ram Saran. The miscreants also took two boxes lying in the godown with them. There was electric light inside the godown. Two of the miscreants had covered their faces and faces of the rest two were visible. The miscreants when started fleeing, after committing robbery, were chased by the aforesaid victims (the witnesses). One of the miscreants was overpowered and captured after a chase of some 100 paces along with the box he was taking with him. The said miscreants, on being apprehended, disclosed his name as Liyaqat (present appellant). A knife was also recovered from him. In apprehending said accused, two persons who were coming on a bike, from opposite direction, namely Kharak Singh (P.W. 4) and Brij Mohan (P.W. 5) helped the victims. Other miscreants succeeded in fleeing away from the scene of incident. The apprehended accused Liyaqat (appellant) was handed over to the police

by the witnesses along with the box and knife, recovered from his possession. The first information report was lodged on the very day i.e. 12.06.1984, at about 11:45 P.M. Thereafter, the police during investigation recovered other stolen items from other accused Rafiq and Aziz Miyan (both these accused were acquitted by the trial court). The police, after investigation, submitted charge sheet against the three accused relating to offences punishable under Section 392 read with 397 of I.P.C. Against appellant Liyaqat, a separate charge sheet under Section 25 of the Arms Act, was also submitted.

4) The Magistrate, on receipt of the charge sheet, after necessary copies were supplied to the accused, as required under Section 207 of CR.P.C., committed the cases to the court of Sessions, for trial. The trial court, after hearing the parties, framed charge of offence punishable under Section 392 read with Section 397 of I.P.C. against the three accused, including the accused / appellant Liyaqat, on 05.12.1985. A separate charge was framed against accused Liyaqat under Section 25 of the Arms Act. All the accused pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 Avdesh Kumar (an eyewitness) and P.W. 2 Har Prasad (another eyewitness); P.W. 3 Ram Saran (eyewtiness); P.W. 4 Kharak Singh (eyewitness) and P.W. 5 Brij Mohan (eyewitness). The prosecution evidence was put to the accused persons under Section 313 of Cr.P.C. by the trial court. In reply to the questions put to the accused / appellant Liyaqat, he alleged the evidence adduced against him to be false. He further alleged that he was falsely implicated in the case due to

some dispute relating to payment with regard to the rate of liquor. The learned Special Judge / Additional Sessions Judge, Nainital, who tried the cases, found accused / appellant Liyaqat guilty of the charge of offence punishable under 25 of the Arms Act and also the one punishable under Section 392 read with Section 397 of I.P.C. After hearing the convict on sentence, the trial court sentenced accused / appellant Liyaqat to rigorous imprisonment for a period of six months under section 25 of the Arms Act. He was further directed to undergo seven years rigorous imprisonment under Section 392 read with Section 397 of I.P.C. Aggrieved by said judgment and order, this appeal was preferred on behalf of the accused / appellant before the Allahabad High Court from the jail, from where it is received by transfer to this Court under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) The notices issued by this Court to the appellant Liyaqat were served personally on him, after the appeal is received by transfer to this Court, but he did not turn up. In the circumstances, Mr. Ajay Singh Bisht, Advocate is appointed Amicus Curiae, to assist this Court in this case, on behalf of the appellant, who is heard by this Court, as mentioned above.

6) Learned Amicus Curiae on behalf of the appellant argued that the first information report, though, mentioned to be prompt one by the trial court, is infact, delayed one. It is alleged by him that the distance of police station from the place of incident was only 3/4 kilometers, and the report after about 1½ hours is delayed one. Considering the

circumstances which have been proved on record by the prosecution that the accused was chased, he was apprehended and thereafter taken to police outpost Mangal Parao, Haldwani, and from there to the police station, the first information report, in the opinion of this Court, within 1 ½ housrs, cannot be said to be delayed one.

7) Learned Amicus Curiae appearing on behalf of the appellant further argued that all the three eyewitnesses, namely P.W. 1 Avdesh Kumar, P.W. 2 Har Prasad and P.W. 3 Ram Saran are the employees of the wine shop and, as such, their testimony should not be believed in the circumstances, that the appellant had a dispute with them with regard to the rate of liquor. as to the dispute which is suggested on behalf of the defence, no evidence in defence is adduced. The incident of robbery has taken place in the godown of the wine shop and presence of the three employees of the wine shop is a natural one. There evidence cannot be discarded only for the reason that all of them are the employee of the wine shop.

8) Mr. Ajay Singh Bisht, learned Amicus Curiae appearing on behalf of the appellant pointed out contradictions in the statements of witnesses, particularly, in view of the fact that P.W. 4 Kharak Singh has stated that he along with Brij Mohan was coming on a motrocycle, when the accused were being chased by the victims. While, P.W. 5 Brij Mohan has stated that they were coming on a scooter. The contradiction pointed out is a minor one and merely for that reason the testimony given by these witnesses in respect of the incident cannot be discarded,

particularly, in view of the fact that Kharak Singh is an illiterate person, as is clear from his statement, recorded by the trial court.

9) Learned Amicus Curiae on behalf of the appellant further contended that the box which was said to have been recovered, at the time the accused / appellant was said to have been apprehended, was not put to test identification. Had the accused not being chased and apprehended on the spot and had the box not been recovered at the spot itself, not holding the test identification could be said to be a significant fact. But, in the present case, since, the box (Ext - 2) and knife (Ext. -1) were recovered on the spot, after accused / appellant was chased and apprehended, while fleeing from the scene of incident, not holding test identification does not create any reasonable doubt in the prosecution story.

10) It is further submitted on behalf of the appellant that P.W. 2 Har Prasad, P.W. 3 Ram Saran and P.W. 4 Kharak Singh were got declared hostile by the prosecution, as such, the trial court has erred in law in believing their testimony. The said three witnesses have corroborated the prosecution story that on the day of incident robbery took place and the miscreants were chased. The only point on which they did not corroborate the prosecution story is that, they could not identify in the court, who is Liyaqat out of accused facing trial. But rest of the two eyewitnesses P.W. 1 Avdesh and P.W. 5 Brij Mohan correctly identified the accused / appellant in the court. Before the trial court they pointed out that he was the person who was apprehended soon after

the robbery and the box (Ext. 2) and knife (Ext.-1) were recovered from him.

11) Having gone through the entire evidence on record, and after hearing the parties, this Court is in agreement with the finding recorded by the trial court that the charge of offence punishable under Section 25 of the Arms Act and the one punishable under Section 392 read with Section 297 of I.P.C. are fully proved against the accused / appellant Liyaqat. The sentence awarded to the accused / appellant is also just and proper.

12) Therefore, this Court is of the view that this appeal has no force, and the same is liable to be dismissed. The appeal is dismissed. The court concerned shall verify if the sentence of seven years awarded against the accused / appellant Liyaqat has already been served out by him. If the same is not served out, the accused / appellant shall be taken into custody forthwith to make him serve out the remaining part of sentence.

(Prafulla C. Pant, J.)

Dt. June 21, 2007
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